

VZCZCXRO6764  
PP RUEHBW RUEHFL RUEHKW RUEHLA RUEHROV RUEHSR  
DE RUEHVJ #0747/01 1151038  
ZNY CCCCC ZZH  
P 241038Z APR 08  
FM AMEMBASSY SARAJEVO  
TO RUEHC/SECSTATE WASHDC PRIORITY 8234  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY  
RUEHTC/AMEMBASSY THE HAGUE PRIORITY 0172  
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC PRIORITY  
RUEKJCS/SECDEF WASHINGTON DC PRIORITY  
RUEAIIA/CIA WASHINGTON DC PRIORITY  
RUFOAOA/USNIC SARAJEVO BK PRIORITY  
RHEFDIA/DIA WASHINGTON DC PRIORITY  
RUEKJCS/JOINT STAFF WASHINGTON DC PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 04 SARAJEVO 000747

SIPDIS

SIPDIS

EUR (DICARLO), EUR/SCE (HOH, FOOKS, STINCHCOMB), EUR/ACE  
(TEFT, DUNN, BORIS, KEETON), S/WCI (WILLIAMSON, LAVINE),  
INR; NSC (BRAUN); OSD FOR BEIN; DOJ PASS TO OPDAT  
(ALEXANDRE); THE HAGUE FOR SCHILDGE, MANNING

E.O. 12958: DECL: 04/07/2018

TAGS: [PGOV](#) [PREL](#) [PINR](#) [KJUS](#) [KAWC](#) [EFIN](#) [EID](#) [EU](#) [BK](#)

SUBJECT: BONISIA - DODIK INTENSIFIES ATTACKS ON STATE-LEVEL  
JUDICIAL REFORMS

REF: A.07 SARAJEVO 2294

[B](#). 07 SARAJEVO 2682

[C](#). 07 SARAJEVO 2555

[D](#). 07 SARAJEVO 2519

lassified By: Ambassador Charles English. Reason 1.4 (B) and (D)

[1](#). (C) SUMMARY: Since the beginning of 2008, Republika Srpska (RS) Prime Minister Milorad Dodik, as part of his wider campaign to undermine the state, has intensified his campaign to challenge state-level judicial institutions. The primary focus of his attacks has been the High Judicial and Prosecutorial Council (HJPC). The HJPC is credited with ensuring that the appointment and disciplining of judges and prosecutors in Bosnia is free from political interference and with ensuring the application of uniform appointment and discipline standards throughout Bosnia. Dodik now demands that the state return this competency to the entities and has threatened to establish a Republika Srpska (RS) HJPC. Dodik has also lashed out at the State Prosecutor's Office and the State Court, accusing them of bias against Serbs and inefficiency, claiming that the establishment of these institutions and other judicial reforms were "completely unsuccessful." Dodik has regularly attacked the international presence within state-level judicial institutions, including Bosnia's Constitutional Court, and demanded their departure. Two of five Peace Implementation Council's (PIC) objectives touch upon judicial issues, and RS officials have already signaled that they will resist their meaningful implementation. Over the next several months, robust international engagement in the justice sector will be required to ensure that these benchmarks are implemented in manner consistent with our goal of entrenching reform and to protect state-level judicial institutions from attacks by Dodik and the RS government. END SUMMARY

Dodik Targets the HJPC

[2](#). (C) Since the beginning of the year, RS PM Dodik has intensified his campaign to undercut state level judicial institutions, particularly the HJPC. Created in 2004, the HJPC is responsible for appointing, evaluating, and disciplining state level judges and prosecutors, improving professional standards and training requirements and

initiating and overseeing the administration of the courts and prosecutors' offices. The American Bar Association's Central European and Eurasian Law Initiative characterized the HJPC's establishment as "perhaps the greatest achievement" of Bosnian judicial reforms. Among other things, the HJPC has enabled the appointment and disciplining of judges to be conducted without political interference. (Note: This was one reason why RS officials resisted transferring competency for the HJPC from the entities to the state in 2004. End Note) Dodik's challenges to the HJPC began soon after he became RS PM when in June 2006 when he tried to bypass the HJPC and directly appoint an RS Special Prosecutor.

¶3. (C) In August 2007, Dodik and other RS officials significantly stepped up their attacks on the transfer of competencies from the entities to the state. Over a period of several months, they claimed that

-- Fifty-three competencies had been transferred to the state illegally (Note: Only four competencies have actually been transferred to the state. Fifty-three refers to the number of state-level institutions, which includes Dayton-created bodies such as the Presidency and Parliament, and bodies established to implement state-level competencies provided for in Dayton, such as State Border Police and the Foreigners Affairs Service. End Note);

-- competency transfers had failed to produce promised benefits to the RS (i.e., Dodik referred to reforms as a "complete swindle"); and,

-- the RS would reclaim competencies from the state, including the HJPC.

RS officials have repeatedly attacked the HJPC's integrity

SARAJEVO 00000747 002 OF 004

and efficiency; Dodik called the HJPC "completely ridiculous." Finally, RS officials have called for the creation of an RS HJPC; Dodik did so as again at an April 15 meeting with EU Heads of Mission. These private comments followed a public claim by the RS Minister of Justice that the HJPC transfer of competency to the state was no longer valid because the state had not located the HJPC in East Sarajevo as it allegedly promised.

Attacking the State Prosecutor's Office and State Court

¶4. (C) Dodik's and RS government officials' attacks on state-level judicial institutions have not been limited to the HJPC. They have also sought to undermine the authority of the State Prosecutor's Office and the State Court. Dodik's attacks on these institutions have generally combined populism and with Serb nationalism by accusing state-level institutions of inefficiency while at the same time pursuing politically-motivated prosecutions against Serbs. For example, Dodik has falsely asserted that state officials have blocked a 2006 criminal report against BiH Army's Fifth Corps Commander Atif Dudakovic for war crimes committed against Serbs while indictments of RS police officers involved in the Srebrenica massacre require "only a day, under pressure from (the Federation) and Sarajevo media." Finally, RS officials have cleverly sought to blur the distinction between the performance of state-level judicial institutions and entity-level judicial institutions by attributing problems within entity judicial systems (e.g., case backlogs; problems with enforcement of judicial decisions; political pressure from entity politicians on entity prosecutors and judges) to the state-level reforms supported by OHR and the international community.

Dodik to Foreigners: Leave

¶5. (C) In the wake of crisis over the HighRep's October 19 impositions, Dodik's Alliance of Independent Social Democrats (SNSD) announced a fifteen point plan which, among other

measures, called for the departure of internationals working in state-level institutions. A primary focus for SNSD is the departure of international secondees at the State Court and the State Prosecutor's Office. The secondees have been part a key part of efforts to bolster Bosnia's state-level judicial institutions (Refs B and C), but have faced consistent RS opposition due to their effectiveness in prosecuting war crimes and politically sensitive cases, including corruption charges against Serb politicians, such as Party for Democratic Progress leader Mladen Ivanic. Dodik, his surrogates in the press, and other RS officials are aware that international prosecutors and judges at the State Court have helped build the institution's capacity and provided political cover for locals prepared to tackle the country's most egregious war crimes, organized crime, and corruption cases. Dodik is also likely aware that complaints against him for corruption have been filed with the State Prosecutor's Office. The internationals' departure would also make it less likely that Dodik himself would be targeted for prosecution.

#### Even Though They Are Still Needed

-----

16. (C) The mandate of international judges, prosecutors, and investigators assigned to the State Prosecutor's Office and State Court -- for war crimes and organized crime -- is currently scheduled to end by December 2009. The program has been critical to our efforts to build the capacity state-level judicial institutions, which are only a few years old. The challenges the State Court and the Prosecutor's Office still face, particularly the regular attempts by Dodik and others to undermine them, have forced us to re-examine assumptions about when to terminate the secondee program. We now believe that having the secondees depart in 2009 as scheduled would be a mistake and would put at serious risk our progress to date. The EC Delegation shares our

SARAJEVO 00000747 003 OF 004

assessment and is already working with us on a strategy for partnering with state-level judicial institutions to maintain the secondee program until 2011. This would get us past the 2010 general election, which hopefully will result in an improved political climate. It will also allow the new heads of the State Court and the State Prosecutor's Office time to take full advantage of international assistance as they transition to a purely national staff. The Acting State Prosecutor Barasin (Serb) and State Court President Kreso (Bosniak) also want to the secondee program extended. HJPC President Branko Peric (Serb) is more ambivalent. The Ambassador and EC Ambassador held preliminary discussions about the issue with all three individuals on April 21. (Note: The National Strategy for War Crimes, the adoption of which is a PIC objective, will very likely recommend maintaining an international presence in state-level judicial institutions. End Note)

#### The RS and the National Justice Sector Strategy

-----

17. (C) The RS has obstructed efforts to adopt the National Justice Sector Reform Strategy, one of the Peace Implementation Council's (PIC) three rule of law benchmarks for closure of the Office of the High Representative (OHR). State Ministry of Justice (MoJ) officials had hoped that the strategy would have been adopted by the four governments by last December (Ref A). The RS government initially agreed to endorse the strategy after its demands to set aside recommendations for creation of a Supreme Court, creation of single, state-level criminal and criminal procedural codes, and creation of a single judicial budget were accepted. However, in the wake of the crisis over the HighRep's October 19 impositions the RS Ministry of Justice ceased participating in the working group charged with drafting the strategy, effectively preventing the process from moving forward. The RS government subsequently forwarded a written

demand to the working group that the "place and role of the HJPC should be analyzed within the discussion of constitutional changes, both from the aspect of the government levels and separation of the HJPC into High Judicial and Prosecutorial Councils" (i.e., having two councils, one for judges, one for prosecutors, rather than one for both judges and prosecutors). In addition to signaling that it now sees the National Justice Sector Reform Strategy as a vehicle for opening the issue of whether the HJPC should continue to exist, the RS proposed additional changes to the document walking-back even the minimal reforms to which it had previously agreed.

Comment

-----

18. (C) The creation of and our subsequent capacity building support for Bosnia's state-level judicial institutions have been a crucial element of our efforts to lock Bosnia onto a self-sustaining path towards Euro-Atlantic integration. These efforts are being threatened by Dodik's campaign to reclaim state competencies, rhetorical attacks on the judiciary and obstruction of the National Justice Sector Reform Strategy. We anticipate Dodik and the RS will take an obstructionist approach to the National War Crimes Strategy, another PIC objective, as well. Dodik's actions threaten more than judicial reform. His assertions of anti-Serb bias at the State Court and the State Prosecutor's office fuel ethnic tensions and undermine the rule of law in Bosnia. These attacks are undoubtedly part of Dodik's long-standing campaign to strengthen RS institutions at the expense of the Bosnian state, but Dodik may also be motivated by awareness that he may himself soon face corruption charges at the State Court. We will continue to speak out about the critical contributions made by the judiciary. However, we remain concerned that once international secondees depart state-level judicial institutions and OHR closes, it will be difficult for the fledgling judiciary to withstand Dodik's attempts to dismantle it. We plan to continue raising the need to support the judiciary in conversations with key officials and politicians, while we work to ensure that the

SARAJEVO 00000747 004 OF 004

PIC objectives are implemented in a manner consistent with our broader state-building goals.

ENGLISH